NFPA
The Food Safety People

NATIONAL
FOOD
PROCESSORS
ASSOCIATION

April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
USDA STOP 0249
Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946; Docket No. LS-02-13; 67 Federal Register 63367; October 11, 2002.

Dear Sir or Madam:

We thank you for providing an opportunity to comment upon this matter.

The National Food Processors Association (NFPA) is the voice of the $500 billion food processing industry on scientific and public policy issues involving food safety, nutrition, technical and regulatory matters and consumer affairs. NFPA's three scientific centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical services, education, communications and crisis management support for the association's U.S. and international members. NFPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

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Under separate cover NFPA filed joint comments (with the American Frozen Food Institute and the Grocery Manufacturers of America) on this regulation. In brief, the joint comments urge USDA to reconsider the approaches it has taken in the Guidelines, which, if issued as binding regulations, would be administratively unsound and in some respects legally impermissible. The Guidelines would "over-regulate" by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting regulations.

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In implementing its country of origin labeling regulations, USDA should adhere to the fundamental principle of regulating only where necessary and to the extent necessary to effectuate the statutory purpose. Specifically in implementing regulations USDA should:

(1) Provide that mixed processed food products are outside the scope of Subtitle D, as required by section 281(2)(B) of that statute;

(2) Delete from the implementing regulations the requirement in the Guidelines to display the country where processing occurred;

(3) Exclude from the scope of its implementing regulations all frozen produce;

(4) Exclude from the scope of its implementing regulations all frozen seafood;

(5) Delete from the implementing regulations the requirement in the Guidelines that multiple countries of origin be listed in the order of predominance by weight; and

(6) Define the scope of the implementing regulations to apply to in-shell peanuts but not peanuts that are shelled and roasted.

We support those comments and offer these additional comments for your consideration.

1. Effective Date

NFPA requests the agency not impose labeling or recordkeeping requirements on products packaged before the date the mandatory rules become effective. To require labeling to be in place at the store level for such products will have the effect of making the voluntary guidelines mandatory contrary to what we believe was Congress' intent in requiring the agency to have a final rule in place by September 30, 2004.

We believe it reasonable and practical for the agency to provide for packaged covered commodities that are in the channels of commerce prior to the promulgation of any final rule be permitted to continue in commerce. Product that has entered the food chain (e.g., packaged frozen peas) and which otherwise complies with existing regulations (including existing country of origin marking requirements for packaged goods) but that may be at variance with any final rule issued by USDA, should be permitted to continue to proceed through the food chain to retail sale without the need to relabel or repackage the product. In any event, all imported packaged produce (including bulk shipments repackaged for retail sale) is subject to country of origin marking requirements established by the Bureau of Customs and Border Protection (formerly the "U.S. Customs Service") regulations (19 CFR Part 134) under the Tariff Act of 1930. Among other advantages, a phase-in period will provide time for the agency to issue guidance

to industry regarding what it will consider to be adequate to satisfy the recordkeeping requirements to verify the country of origin declaration.

2. Definitions

We request the following definitions offered for comment in the Guidelines be amended as follows:

a. Material Change

a. Fresh and Frozen Fruits and Vegetables

Because frozen packaged fruits and vegetables are covered by Bureau of Customs and Border Protection country of origin marking requirements at 19 CFR Part 134, we believe it is important to delete the definition's reference to "frozen" fruits and vegetables in order to be consistent with current law or for USDA regulations for this product to be identical with existing Bureau requirements.

b. Peanuts

With regard to peanuts, we also request the agency recognize that the roasting of peanuts is a material change from the raw peanut and so incorporate "roasting" into the regulations definition of "material change" for this commodity.

c. Wild and Farm-raised Fish

We believe the final regulations should recognize freezing and smoking as constituting a "material change." The amended definition may read, for example:

"5. Wild fish and farm-raised fish: Altered to the point that its character is no longer that of the covered commodity. Includes the freezing, smoking, cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines, frozen and/or smoked fish, Surimi, and restructured fish sticks."

b. Perishable Agricultural Commodity

The definition of "Perishable Agricultural Commodity" should be interpreted to read as follows:

> " 'Perishable Agricultural Commodity' means fresh fruits and vegetables of every kind and character where the original character has not been changed (for example fresh green beans would be covered, frozen or canned green beans would not; fresh oranges would be included, frozen

concentrated orange juice would not)."

This interpretation will recognize that the Bureau of Customs and Border Protection has established regulations effecting country of origin marking for packaged frozen produce.

3. Consumer Notification

a. Labeling of Imported Products

We agree with the statement that imported products "Shall be labeled with the country from which it was exported in conformance with existing Federal laws." NFPA interprets this statement as recognition that the Bureau of Customs and Border Protection has jurisdiction over the country of origin marking requirements for imported products at port of entry as well as the labeling of packaged products containing imported ingredients including those repackaged in the United States. USDA should recognize Bureau of Customs and Border Protection jurisdiction and permit Customs rulings on such marking to continue in place or adopt regulations identical to those provided for by such Customs rulings. For packaged food products this means the package bears a statement "Product of Country X" with "X" representing the country in which the product was prepared and packaged in its final form. This is not necessarily the country from which it was finally exported to the United States. During the West Coast Dock strike many ships carrying products from Asia were diverted to ports in Mexico or Canada then transported by truck or rail to their final destination in the United States. Simply entering the U.S. from Mexico or Canada did not make them a product of either of those countries.

b. Consistency with Bureau of Customs and Border Protection Regulations

With regard to those parts of the proposed regulations that turn upon the conclusion that a product has been "substantially transformed," we believe that the final rules should be made consistent with the long-standing interpretation of "substantial transformation" of product as determined by the Bureau of Customs and Border Protection at 19 CFR Part 134 under the Tariff Act of 1930. With respect to the example label statement in this section "Grown and packed in Country X and Processed in the United States," we believe the current labeling permitted by Customs "Product of Country X" is sufficient to inform the consumer of the origin of the product. We agree that an additional voluntary declaration "Processed in the United States" may be provided for fruits and vegetables and request that it be made voluntary for seafood.

c. Blended Products

We disagree with the proposed requirement that the source of each individual item be identified and that the sources be identified in order of predominance by weight. The proposed interpretation could require a statement for mixed frozen peas and carrots each from country X and Y where X= Mexico and Y = Guatemala

"Peas from Mexico, Carrots From Guatemala, Carrots from Mexico, and Peas From Guatemala, Processed in the United States."

The requirement will create an unreasonably complex and likely unworkable labeling and recordkeeping nightmare for each product code lot while diverting resources from important food safety and security issues. Minor variations in the quantity of each item for individual code lots can require a new label. We believe an appropriate label statement "Product of Mexico and Guatemala" or "Product of Guatemala and Mexico" with no requirement for addressing the individual components or the order of predominance of individual ingredients will provide the purchaser with adequate information concerning the origin of the product and meet the intent of the law and the requirements of the current Bureau of Customs and Border Protection regulations for imported product under the Tariff Act of 1930 which apply to this product.

d. Order of Predominance

USDA's voluntary guidelines further depart from the requirements of Subtitle D in addressing the country of origin of covered commodities having multiple countries of origin. Such commodities, which under the Section 304 regulatory scheme are regarded as "commingled fungible goods," are required under that regulatory scheme to display the multiple foreign countries of origin, but not in any particular order.

For commingled fungible goods, USDA's voluntary guidelines require that the countries be listed in the order of their predominance by weight, even though no such requirement appears in Subtitle D. The requirement to disclose this level of detail in country of origin information, which is of dubious value to the consumer, will greatly complicate the record-keeping and other compliance-related burdens on the U.S. food industry and require frequent, and costly, labeling changes. Any reference to listing of countries in order of predominance should be removed from the final document.

4. Markings

a. Abbreviations

We support the abbreviations provided in the voluntary guide and request that additional country name abbreviations be provided consistent with current Bureau of Customs and Border Protection list of permissible abbreviations (December 19, 1997 letter from Sandra Bell, Chief, Special Classification and Marking Branch, U.S. Customs Service – copy attached). That list includes the following:

Country	**Abbreviation**
Great Britain	Gt. Britain
United Kingdom	U.K.
Luxembourg	Luxemb or Luxembg
Federal Republic of Germany	Germany or Fed. Rep. of Germany
Mexico	Mex. (only if used in conjunction with names of cities or state initials)
Switzerland	Switz.
Republic of Korea	Rep. of Korea or South Korea or S. Korea
Dominican Republic	Dominican Rep.
Sierra Leone	Sa. Leone
South Africa	S. Africa

Additional country abbreviations may be provided for where they clearly indicate the country of origin.

5. State or Regional Labeling Programs

We disagree with the agency's position regarding state or regional labeling programs. It is our position that State and regional labeling programs are designed or could be designed to provide proper documentation that the fresh fruit or vegetable included in the program does, in fact, originate in that State or region of the United States and the labeling of the product at retail "Washington State Apples" clearly communicates to the consumer that it refers to a geographic region in the United States. Clearly such programs should be considered to be in compliance with the intent of the law. We believe that such programs and the labeling permitted under those programs provides the consumer with sufficient information to determine that the produce originated in a specific geographic region of the United States. We request that USDA reevaluate its position and provide as a part of any final rule a list of State and regional labeling programs which fulfill the intent of the law subject to periodic review of the recordkeeping provisions of such program(s) to ensure compliance. We encourage USDA to work with State and regional groups so that programs currently judged as not meeting the minimum criteria of the compliance program can be brought into compliance.

Again we thank the agency for this opportunity to comment on the proposed regulation.

Sincerely,

Allen Matthys, Ph.D.
Vice President, Federal and State Regulations
National Food Processors Association

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

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Allen Matthys
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Dear Mr. Matthys:

This is in response to your letter dated November 14, 1997, in which you requested clarification of permissible country of origin abbreviations for purposes of complying with the marking statute.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304.

Pursuant to section 134.45(b), Customs Regulations (19 C.F.R. §134.45(b)), an article may be properly marked using an abbreviation for the country if it unmistakably indicates the name of a country. Section 134.45(b) provides "Gt. Britain" for "Great Britain" or "Luxemb" and "Luxembg" for "Luxembourg" as examples of acceptable abbreviations that clearly indicate the country of origin.

Customs has permitted the use of abbreviations instead of the entire name of the country of origin in limited circumstances. We have stated that "It is our view that most abbreviations do not 'unmistakably' identify the country of origin and are therefore unacceptable. The ultimate purchaser should be able to ascertain the country of origin at a glance without any guesswork...." Headquarters Ruling Letter (HRL) 731799, dated May 15, 1989 (rejected the abbreviations "VZLA" or VENZLA"). The following are additional examples of abbreviations which Customs has previously rejected: (1) the abbreviations "Arg" or "Argtin" and "Hun" or "Hung" did not unmistakably indicate the country names of Argentina and Hungary and therefore did not comply with 19 U.S.C. §1304 and 19 C.F.R. §134.45(b) (HRL 733104, dated March 15, 1990); (2) the abbreviations "CAN" and "CDN" were not acceptable because they did not unmistakably designate the country of origin to the ultimate purchaser (HRL 731760, dated December 27, 1989); (3) the abbreviation "IN" was deemed unacceptable for

purposes of marking encapsulated integrated circuits as products of Indonesia (HRL 734443, dated June 3, 1992); (4) "H.K." was deemed an unacceptable abbreviation for Hong Kong (HRL 735281, dated February 24, 1994).

The abbreviations you noted in your letter which are still acceptable for country of origin marking include the following:

Abbreviation	Country Name
Germany	Federal Republic of Germany
Fed. Rep. of Germany	Federal Republic of Germany
Mex.	Mexico only if used in conjunction with names of cities or state initials
Switz.	Switzerland.

You also question whether the abbreviation "S. Korea," "South Korea," or "Rep. of Korea" are acceptable for the Republic of Korea. We have no objection to the use of any of these abbreviations for the Republic of Korea. Some additional abbreviations which have been deemed acceptable include the following: "U.K." for the United Kingdom, "Dominican Rep." for the Dominican Republic, "Sa. Leone" for Sierra Leone, and "S. Africa" for South Africa. You may seek approval of additional country name abbreviations for purposes of compliance with the marking statute through a request for a prospective binding ruling letter pursuant to Part 177, Customs Rulings (19 C.F.R. Part 177).

Lastly, you request that Customs reconsider its position articulated in T.D. 97-79 which does not allow for the word concentrate to be abbreviated as "conc." with respect to the country of origin marking requirements. We are not inclined to reverse our position that it is incorrect to abbreviate the word "concentrate" to "conc" when disclosing the origin of juice concentrate since the ultimate purchaser will not unmistakably identify "conc" as an abbreviation for the word "concentrate" notwithstanding the Food and Drug Administration's requirement of juice products to state that the juice is a product from concentrate as part of the name of the product at other locations on the package. *See* 21 C.F.R. §102.33(g)(1).

If I can be of further assistance, do not hesitate to contact me at 202-927-2310.

Sincerely,

Sandra L. Bell, Chief
Special Classification and Marking Branch